IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

WP(C).No. 27389 of 2007(I)

PETITIONER:

P.D.BAIJU, AGED 42 YEARS, S/O.DAMODARAN
PUTHENKUDIYILKI HOUSE, BYE LANE,
7TH THOTTAKATTUKARA, ALUVA,ERNAKULAM.

BY ADV. SRIR.AZAD BABU

RESPONDENTS:
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1. AUTHORISED OFFICER,STATE BANK OF INDIA
EDAMUTTAM, MULANGIL RAMAKRISHNA MEMORIAL BUILDING
EDAMUTTAM,REPRESENTED BY THE GENERAL MANAGER.

2. STATE BANK OF INDIA, EDAMUTTAM,
MULANGIL RAMAKRISHNA MEMORIAL BUILDING,
EDAMUTTAM,REPRESENTED BY THE GENERAL MANAGER.

BY SRI.K.K.CHANDRAMOHANDAS, SC, SBI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
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W.P.(C) NO. 27389 OF 2007
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Dated this the 14th day of September, 2007

J U D G M E N T

The prayer in this writ petition is to quash Exhibits P3 and P6. By Exts. P3 and P6, petitioner has been called upon to remit Rs.99,000/- being the SARFAESI Commission and Rs.6,100/- being the legal expenses. The grievance of the petitioner is confined to the demand for Rs.99,000/-, being the SARFAESI Commission.

2. According to the learned counsel, no amount was realised by the Bank in pursuance to the provisions of the SARFAESI Act and hence demand for Commission is not possible.

3. I do not find any merit in the submission. On an earlier occasion, when steps were taken against the petitioner under the said Act, he had filed a writ petition as WP(C) 13314/07, which was disposed of by Ext.P1

judgment. That judgment was rendered on an agreed basis directing that if the petitioner remits all outstanding arrears and expenditure incurred under the SARFAESI Act, within a period of 15 days, the bank will reschedule the loan.

4. It is now pointed out by the standing counsel for the Bank that pursuant to the directions of this court, he had obtained instructions from the Bank, which had conveyed the instructions by their letter dated 5th July 07. Counsel points out that in the said letter, Bank had made it clear that the petitioner should meet all other incidental expenses connected with the initiation of SARFAESI Act including the SARFAESI Commission of Rs.99,002/-. It is also pointed out that thereafter an order was passed on 1/8/07 as to whether the petitioner was aggreable for the terms suggested by Bank, and that it is only after

agreement of the petitioner was informed to the Court, Ext.P1 judgment was rendered.

5. Thus, it is clear that in the previous round of litigation, petitioner had agreed to pay the expenditure incurred by the Bank towards SARFAESI Commission also. It is on that basis loan was directed to be rescheduled. Thus having agreed before this court for paying the said amount, it is not fair or legal on the part of the petitioner to now contend that the amount is not payable. Therefore, I do not find any merit in the contentions raised and the writ petition is only to be dismissed and I do so.

6. However, at this stage, the counsel for the petitioner seeks time to make payment, as the Bank is insisting that the amount should be paid by 14th of September, 2007.

After hearing both sides, I direct that the petitioner will be permitted to pay the balance amount within a period of one month from today, and in the meanwhile further proceedings will be kept in abeyance.

ANTONY DOMINIC, JUDGE.

Rp